

SERVICE DATE – DECEMBER 17, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 933 (Sub-No. 1X)

DAKOTA, MISSOURI VALLEY AND WESTERN RAILROAD, INC.—DISCONTINUANCE
OF SERVICE EXEMPTION—IN BURKE COUNTY, N.D.

Digest:¹ Dakota, Missouri Valley and Western Railroad, Inc. is permitted to stop providing rail service over approximately 27 miles of rail line owned by the Soo Line Railroad Company d/b/a Canadian Pacific Railway Company in Burke County, N.D., subject to standard employee protective conditions.

Decided: December 16, 2014

By petition filed on August 29, 2014, Dakota, Missouri Valley and Western Railroad, Inc. (DMVW) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue its lease operations over two rail lines totaling approximately 27 miles in length owned by the Soo Line Railroad Company d/b/a Canadian Pacific Railway Company (CP). The rail lines consist of: (1) an approximately 17-mile rail line between (a) milepost 541.0 at Flaxton, N.D., and milepost 549.64 at Rival, N.D., (b) milepost 549.64 at Rival and milepost 550.8 at Lignite Junction, N.D., and (c) milepost 550.8 at Lignite Junction and milepost 558.0 near Stampede, N.D. (the Flaxton-Stampede Line); and (2) an approximately 9.96-mile rail line between milepost 550.8 (previously BNSF milepost 56.96) at Lignite Junction east past Lignite to the end of CP's ownership (previously BNSF milepost 47) (the Lignite Line) (collectively, the Lines).² Pursuant to 49 U.S.C. § 10502(b), the Board served and published a notice in the Federal Register on September 19, 2014 (79 Fed. Reg. 56,433), instituting an exemption proceeding. No comments were filed in opposition to the petition. We will grant the exemption subject to standard employee protective conditions.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The Lines share a common point at Lignite Junction, N.D.

BACKGROUND

DMVW has operated over the Flaxton-Stampede Line since 1990 pursuant to a lease and trackage rights from CP,³ and has operated over the Lignite Line since 2007 pursuant to a lease from CP.⁴ In its petition, DMVW states that it is seeking to discontinue operations over the Lines because CP has terminated DMVW's lease rights over them and that CP intends to provide common carrier rail service over the Lines itself.⁵ DMVW asserts that no shipper will lose rail service as a result of a discontinuance of DMVW's service.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the Board's prior approval. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (RTP); and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of DMVW's proposed discontinuance under 49 U.S.C. § 10903 is not necessary here to carry out the RTP. Consistent with 49 U.S.C. §§ 10101(5) and (9), an exemption would foster sound economic conditions in transportation and encourage efficient management by quickly allowing DMVW to discontinue its common carrier obligation to provide service over rail lines for which it no longer has a valid lease. An exemption would also minimize the administrative expense of the application process and reduce regulatory barriers to exit in accordance with 49 U.S.C. §§ 10101(2) and (7). Other aspects of the rail transportation policy would not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. CP has a common carrier obligation to provide service over the Lines and, therefore, no shipper would lose access to service as a result of this discontinuance. In addition, no shipper has opposed the proposed discontinuance. Nevertheless, to ensure that the shippers on the Lines are informed of our action, we will require DMVW to serve a copy of this decision

³ See Dakota, Mo. Valley & W. R.R.—Lease & Operation Exemption—Soo Line R.R., FD 31720 (ICC served Sept. 19, 1990).

⁴ See Dakota, Mo. Valley & W. R.R.—Lease & Operation Exemption—Soo Line R.R., FD 35055 (STB served July 27, 2007).

⁵ DMVW will retain rights to operate over the Lines for the sole purpose of exchanging rail cars with CP at Flaxton, N.D.

on all current shippers on the Lines so that it is received by them within five days of the service date of this decision and to certify contemporaneously to us that it has done so.⁶

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because DMVW seeks a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the Line for continued rail service under 49 U.S.C. § 10904 (although the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use under 49 U.S.C. § 10905. This proceeding is also exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by DMVW of its operations over the above-described lines, subject to the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

2. DMVW is directed to serve a copy of this decision on all current shippers on the Lines so that they receive a copy within five days after the service date of this decision and to certify to the Board contemporaneously that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by December 29, 2014, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). Any offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).

4. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

⁶ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

5. Petitions to stay must be filed by January 2, 2015. Petitions to reopen must be filed by January 12, 2015.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on January 16, 2015.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.